NO. 15

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IN THE

Supreme Court of the United States

October Term, [redacted] 1950

No. [redacted] 15

STATE OF MISSOURI, at the Relation of SOUTHERN RAILWAY COMPANY, a Corporation, *Petitioner*,

v.

WALDO C. MAYFIELD, Judge of the Circuit Court of the City of St. Louis, Missouri, and His Successors, as Presiding Judge of Said Court, *Respondent*.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSOURI, AND BRIEF IN SUPPORT THEREOF.

SIDNEY S. ALDERMAN,
BRUCE A. CAMPBELL,
FRED W. SCHWARZ,
H. G. HEDRICK,
Attorneys for Petitioner,
Southern Railway Company.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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IN THE

Supreme Court of the United States

October Term, 1949

No.

STATE OF MISSOURI, at the Relation of SOUTHERN RAILWAY COMPANY, a Corporation, *Petitioner,*

v.

WALDO C. MAYFIELD, Judge of the Circuit Court of the City of St. Louis, Missouri, and His Successors, as Presiding Judge of Said Court, *Respondent.*

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSOURI.

Petitioner, Southern Railway Company, a corporation, respectfully prays that a writ of certiorari issue to the Supreme Court of the State of Missouri to review the final judgment entered in its case No. 41461 under the above

title, quashing its alternative writ of mandamus issued April 13, 1949, and refusing to order the Circuit Court of the City of St. Louis, Missouri, to entertain and determine a motion to dismiss an action brought under the Federal Employers' Liability Act under the principle of *forum non conveniens*.

SUMMARY STATEMENT OF THE CASE.

On October 13, 1948, Lelia M. Blevins, who had been appointed administratrix of the estate of Roderick E. Blevins by a Tennessee Court, filed an action under Federal Employers' Liability Act in the Circuit Court of the City of St. Louis, Missouri, against Southern Railway Company, relator below, for $100,000.00, on account of the death of said Roderick E. Blevins while in the employ of the said relator, in Tennessee (R. pp. 19-24). Both the administratrix and the deceased were residents of Tennessee. On November 13, 1948, said relator moved to dismiss on the ground of inappropriate forum within the doctrine of *forum non conveniens*, and on March 14, 1949, the presiding judge denied the motion on the sole ground that he had no jurisdiction to entertain it (R. pp. 24-30). On March 31, 1949, relator below filed its petition for writ of mandamus in the Missouri Supreme Court and that court, on April 12, 1949, issued its alternative writ (R. pp. 1-18, 30-31) and in due time respondent below made his return (R. pp. 31-35). Thereafter, the Missouri Supreme Court quashed its alternative writ of mandamus and entered judgment against petitioner upon the theory that Section 6 of Federal Employers' Liability Act, as construed by this Court in *Baltimore & Ohio R. Co.* v. *Kepner*, 314 U. S. 44, and *Miles* v. *Illinois Central R. Co.*, 315 U. S. 698, compelled the Circuit Court of the City of St. Louis to retain jurisdiction of the F. E. L. A. action and determine it, and denied to that Court the right to consider any element of convenience and to apply the principles and doctrine of *forum non conveniens* in dismissing the action (R. pp. 67-75).

THE OPINION BELOW.

The opinion of the Missouri Supreme Court appears at page 67 and following of the transcript filed herewith. The opinion has not yet been published in the official reports of the Missouri Supreme Court, but it is reported in 224 S. W. (2d) 105.

The decision of the Missouri Supreme Court was based solely upon its determination of a question of federal law, (R. pp. 74-75).

JURISDICTION.

The judgment sought to be reviewed was entered October 10, 1949 (R. pp. 67-75); a petition for rehearing was duly filed October 22, 1949 (R. pp. 76-79); and the petition for rehearing was denied November 14, 1949 (R. pp. 79-80).

The jurisdiction of this Court is invoked under Section 1257, Title 28, United States Code, providing for review by this Court by certiorari of decisions of the highest courts of the several States wherein a right or privilege is specifically set up or claimed under the Constitution or Statutes of the United States.

Specifically, this petitioner says:

(1) The Missouri Supreme Court decided a federal question of substance contrary to the decisions of this Court by construing and applying Section 6 of the Federal Employers' Liability Act (Sec. 56, Title 45, U. S. Code) to inhibit State courts from applying the doctrine of *forum non conveniens* in Federal Employers' Liability Act cases.

> *Second Employers' Liability Cases*, 223 U. S. 1;
> *Douglas* v. *N. Y., N. H. & H. R. Co.*, 279 U. S. 377;
> *Miles* v. *Illinois Central R. Co.*, 315 U. S. 698;
> *Ex Parte Collett*, 337 U. S. 55.

(2) The Missouri Supreme Court denied to petitioner the equal protection of the law and deprived petitioner of its property without due process of law and abridged its

privileges in violation of Section 1 of Amendment XIV of the Constitution of the United States, in that by denying the writ of mandamus, it did not require the Missouri Circuit Court to exercise its discretion under the doctrine of *forum non conveniens*.

Douglas v. *N. Y., N. H. & H. R. Co.*, 279 U. S. 377.

(3) The Missouri Supreme Court misapplied Section 2 of Article IV of the Constitution of the United States in holding that the application of the doctrine of *forum non conveniens* by the Missouri Circuit Court would violate that provision.

Douglas v. *N. Y., N. H. & H. R. Co.*, 279 U. S. 377;
McKnett v. *St. L. & S. F. Ry. Co.*, 292 U. S. 230.

THE QUESTIONS PRESENTED.

1. Is a state court which has jurisdiction of an action under the Federal Employers' Liability Act denied the right and power, by the terms and provisions of Section 6 of said Act, to exercise its judicial discretion in determining whether to retain or relinquish jurisdiction of the case under the doctrine of *forum non conveniens*?

2. Does Section 6 of the Federal Employers' Liability Act give the plaintiff in an action covered by said Act an absolute right to a trial in any state court in which he elects to commence his action and where the defendant is amenable to service?

3. Is there any provision of the Constitution of the United States which limits the right of a state court to exercise its discretion, under the doctrine of *forum non conveniens*, to retain or relinquish jurisdiction of an action under the Federal Employers' Liability Act otherwise within its jurisdiction?

4. Is there any authority under the Constitution of the United States for the Congress to enact a statute which

would compel a state court of competent jurisdiction to entertain any action under the Federal Employers' Liability Act which is filed with it, regardless of considerations of inconvenience and imposition, and to deny to the state court the right to dismiss the action under the doctrine of *forum non conveniens?*

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT.

1. The Missouri Supreme Court, in holding as a matter of law that Section 6 of the Federal Employers' Liability Act (Sec. 56, Title 45, U. S. Code) places upon the courts of Missouri of competent jurisdiction an absolute duty to hear and determine any action under the Federal Employers' Liability Act brought before it by any plaintiff against any defendant, and that it denies to the Missouri courts the right to apply the doctrine of *forum non conveniens* and dismiss a case imported into its jurisdiction, has decided a federal question of substance directly in conflict with the decision of this Court in

Douglas v. *N. Y., N. H. & H. R. Co.*, 279 U. S. 377,

and in a way not in accord with the principles announced by this Court in

Ex Parte Collett, 337 U. S. 55,
Miles v. *Illinois Central R. Co.*, 315 U. S. 698, and
Second Employers' Liability Cases, 223 U. S. 1, and

in a way in direct conflict with decisions on the same question by the Supreme Courts of other states.

Murnan v. *Wabash R. Co.*, 246 N. Y. 244, 158 N. E. 508,
Taylor v. *Southern Ry. Co.*, 350 Ill. 139, 182 N. E. 805.

2. The Missouri Supreme Court denied to Southern Railway Company, relator below, the equal protection of the law

and deprived it of its property without due process of law, in violation of Section 1 of Amendment XIV of the Constitution of the United States, by refusing to order and direct the Circuit Court of the City of St. Louis, Missouri, to hear and determine the petition of said relator, invoking the principle and doctrine of *forum non conveniens*, to dismiss the action under the Federal Employers' Liability Act filed against it by a non-resident of Missouri.

3. The Missouri Supreme Court misinterpreted and misapplied Section 2 of Article IV of the Constitution of the United States in holding that application of the doctrine of *forum non conveniens* to dismiss his action would deny to the plaintiff in the action brought under the Federal Employers' Liability Act in the Circuit Court of the City of St. Louis, Missouri, arising out of injuries alleged to have been sustained in the State of Tennessee where plaintiff resided, the privilege which Missouri allows to its own citizens to maintain actions under the Act in its courts of competent jurisdiction.

Douglas v. *N. Y., N. H. & H. R. Co.*, 279 U. S. 377;
McKnett v. *St. Louis & S. F. Ry. Co.*, 292 U. S. 230;
Gulf Oil Corp. v. *Gilbert*, 330 U. S. 501;
Whitney v. *Madden*, 400 Ill. 185, 79 N. E. 2d 593;
Universal Adjustment Corp. v. *Midland Bank*, 281 Mass. 303, 184 N. E. 152.

4. The same sound reason which moved this Court to assign for hearing the petitions for writ of mandamus and for writ of prohibition in *Ex Parte Collett*, 337 U. S. 55, to remove the "judicial gloss" placed on Section 6 of the Federal Employers' Liability Act by language used in the opinion in *Baltimore & Ohio R. Co.* v. *Kepner*, 314 U. S. 44, in relation to the venue of F. E. L. A. cases in federal courts, is present in this case which involves the even thinner gloss placed on said section by language used in the opinion in *Miles* v. *Illinois Central R. Co.*, 315 U. S. 698, with respect

to venue and procedure in state courts in F. E. L. A. cases. Whether said Section 6 deprives state courts of their historic right and authority to apply the principle and doctrine of *forum non conveniens* to F. E. L. A. cases is important in the administration of justice because of the direct conflict between the decision of the Supreme Court of the State of Missouri in the instant case and the decisions of the Court of Appeals of the State of New York in *Murnan* v. *Wabash R. Co.*, 246 N. Y. 244, 158 N. E. 508, of the Supreme Court of the State of Illinois in *Taylor* v. *Southern Ry. Co.*, 350 Ill. 139, 182 N. E. 805, and of the courts of other states which recognize and apply the principle and doctrine of *forum non conveniens* in F. E. L. A. cases.

5. The issues involved in this case are of great public importance. The administrative difficulties for courts arising when litigation is piled up in congested centers instead of being handled at its origin and the unjust tax burden and burden of jury duty imposed upon the residents of the jurisdiction into which foreign cases are imported and the denial to such citizens of access to their over-crowded courts are all factors of public interest which are present in this litigation. The factors of private interest here involved are obvious and are great.

> *Gulf Oil Corp.* v. *Gilbert*, 330 U. S. 501;
> *Douglas* v. *N. Y., N. H. & H. R. Co.*, 279 U. S. 377;
> *Universal Adjustment Corp.* v. *Midland Bank*, 281 Mass. 303, 184 N. E. 152;
> *Whitney* v. *Madden*, 400 Ill. 185, 79 N. E. 2d, 593;
> *Collard* v. *Beach*, 81 N. Y. Supp. 619, 81 App. Div. 582.

6. The decision of the Missouri Supreme Court in this case taken in conjunction with the decision of this court in *Ex Parte Collett*, 337 U. S. 55, has created an incongruous and intolerable situation whereby Federal District Courts may apply the principle of *forum non conveniens* in F. E. L. A. cases but state courts sitting in the same place are

denied the right to apply the same principle under the same facts. This arises from the Missouri court's mistaken interpretation of this Court's decisions construing Section 6 of the Federal Employers' Liability Act. This Court expressly held in *Ex Parte Collett* that Section 6 does not prohibit the application of the doctrine of *forum non conveniens* in such cases.

7. It is respectfully submitted that the situation presented by this record should move this Court to grant certiorari to review the decision of the Missouri Supreme Court.

Rule 38 of Supreme Court Rules, par. 5(a);
Ex Parte Collett, 337 U. S. 55;
Baltimore & Ohio R. Co. v. *Kepner*, 314 U. S. 44.

SOUTHERN RAILWAY COMPANY

By

SIDNEY S. ALDERMAN,
BRUCE A. CAMPBELL,
FRED W. SCHWARZ,
H. G. HEDRICK,
Attorneys for Petitioner.

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v.

WALDO C. MAYFIELD, Judge of the Circuit Court of the City of St. Louis, Missouri, and His Successors, as Presiding Judge of Said Court, *Respondent.*

BRIEF IN SUPPORT OF PETITION.

THE OPINION BELOW.

The opinion of the Missouri Supreme Court appears at pages 67-75 of the Record. The opinion has not yet been published in official reports of the Missouri Supreme Court but it is reported in 224 S. W. 2d 105.

JURISDICTION.

The jurisdiction of this Court is invoked under Section 1257, Title 28, United States Code. The specific grounds for invoking jurisdiction are set out on pages 3-4 of the annexed petition.

SUMMARY STATEMENT OF THE CASE.

A summary statement of the case is set out on page 2 of the petition annexed hereto.

THE QUESTIONS PRESENTED.

The questions presented are stated on pages 4-5 of the petition annexed hereto, but for convenience, the questions presented are repeated, as follows:

1. Is a state court which has jurisdiction of an action under the Federal Employers' Liability Act denied the right and power, by the terms and provisions of Section 6 of said Act, to exercise its judicial discretion in determining whether to retain or relinquish jurisdiction of the case under the doctrine of *forum non conveniens?*

2. Does Section 6 of the Federal Employers' Liability Act give the plaintiff in an action covered by said Act an absolute right to a trial in any state court in which he elects to commence his action and where the defendant is amenable to service?

3. Is there any provision of the Constitution of the United States which limits the right of a state court to exercise its discretion, under the doctrine of *forum non conveniens,* to retain or relinquish jurisdiction of an action under the Federal Employers' Liability Act otherwise within its jurisdiction?

4. Is there any authority under the Constitution of the United States for the Congress to enact a statute which would compel a state court of competent jurisdiction to entertain any action under the Federal Employers' Liability Act which is filed with it, regardless of considerations of convenience and imposition, and to deny to the state court the right to dismiss the action under the doctrine of *forum non conveniens?*

SUMMARY OF ARGUMENT.

I. The Congress of the United States, in the enactment of the Federal Employers' Liability Act, did not determine, nor did it purport to determine, the venue or control the procedure of State courts. It dealt only with venue and procedure of Federal courts. *Douglas* v. *N. Y. N. H. & H. R. Co.*, 279 U. S. 377; *Second Employers' Liability Cases*, 223 U. S. 1; *Miles* v. *Illinois Central R. Co.*, 315 U. S. 698; *Herb* v. *Pitcairn*, 324 U. S. 117; *Gulf Oil Corp.* v. *Gilbert*, 330 U. S. 501; *Murnan* v. *Wabash R. Co.*, 246 N. Y. 244; *Taylor* v. *Southern Railway Co.*, 350 Ill. 139.

II. The Missouri Supreme Court erred in its interpretation of the opinions of this Court in the *Kepner* and *Miles* cases. Neither of these cases involved the authority of a state court to exercise the right to apply the historic doctrine of *forum non conveniens* in determining whether it should retain jurisdiction of a F. E. L. A. case and neither the *Kepner* nor the *Miles* case decided that a state might not by judicial decision or legislative enactment regulate the use of its courts generally. This court in the *Miles* case specifically disclaimed that it was holding that states cannot control their courts. See cases cited under point I.

III. Section 6 of the Federal Employers' Liability Act, as construed by the Missouri Supreme Court, invades the fundamental right of the states to regulate and control the venue and procedure of state courts.

IV. Since Congress, by the enactment of Section 1404(a) of the Judicial Code, declared a general federal public policy favoring the application of the principle of *forum non conveniens* to all civil actions in Federal courts, including Federal Employers' Liability Act actions, no possible inference can now be drawn from F.E.L.A. forbidding the application of that doctrine by state courts to actions under that Act. *Ex Parte Collett*, 337 U. S. 55.

V. The application of the doctrine of *forum non conveniens* in F.E.L.A. cases does not violate the privileges and immunities clause of Article IV, Section 2, of the Constitution of the United States. *Douglas* v. *N.Y.N.H. & H.R. Co.*, 279 U. S. 377; *McKnett* v. *St.L. & S.F.Ry.Co.*, 292 U. S. 230; *Chambers* v. *B. & O.R.Co.*, 207 U. S. 142.

ARGUMENT.

I.

The Congress of the United States, in the enactment of the Federal Employers' Liability Act, did not determine, nor did it purport to determine, the venue or control the procedure of state courts. It dealt only with venue and procedure of federal courts.

The Federal Employers' Liability Act was enacted by Congress to implement legislation designed to protect the life, health and safety of railroad employees and to remove or limit the defenses of contributory negligence, assumption of risk, and other defenses recognized at common law. The Act gave to federal courts a jurisdiction of a class of tort actions over which state courts had exercised jurisdiction from the earliest days of state and federal courts.

Section 6 (Section 56, Title 45, United States Code) of the Act, which contains the provision relevant to this case, provides as follows:

> "Under this chapter an action may be brought in a district court of the United States, in the district of the residence of the defendant, or in which the cause of action arose, or in which the defendant shall be doing business at the time of commencing such action. The jurisdiction of the courts of the United States under this chapter shall be concurrent with that of the courts of the several States, and no case arising under this chapter and brought in any State court of competent jurisdiction shall be removed to any court of the United States."

Although the Act contains explicit venue provisions for the federal courts, there are no provisions which even purport to determine the venue or the rules of procedure of state courts. These are left to the states to determine. This has been clearly settled by many decisions of this Court, of other federal courts, and of state courts.

The Act, as passed in 1908, made no reference to state courts. No reference was necessary because concurrent jurisdiction of state courts with federal courts over all cases arising under the laws of the United States had already been recognized by the general jurisdictional act of 1888 (25 Stat. 433), then in effect, and had been generally recognized by the decisions of the courts, federal and state. Notwithstanding the well settled principle of concurrent jurisdiction, the Supreme Court of Errors of Connecticut, in 1909, in *Hoxie* v. *N. Y., N. H. & H. R. Co.*, 82 Conn. 352, 73 Atl. 754, held that Congress did not intend to authorize actions under the Act in state courts. To eliminate the possibility of other state courts falling into the same error, the Act was amended in 1910 to include the express recognition of the concurrent jurisdiction of Federal courts with state courts.

The legislative intent apparent from the plain language of the statute is borne out by the legislative history of the amendment. The House Committee on Judiciary, reporting on the amendment, explained that it was being proposed in order that there could be no excuse for courts of other states to follow the error of the Connecticut court, saying:

> "It is clear under the decisions of the Supreme Court of the United States, that this conclusion of the Connecticut court is erroneous. And the reasons recited by the Connecticut court lead to an opposite conclusion from that which the opinion declares upon the subject. But no harm can come, and much injustice and wrong to suitors may be prevented by an express declaration that there is no intent on the part of Congress to confine remedial actions brought under the

employers' liability act to the courts of the United States." H. R. Rep. No. 513, 61st Cong., 2d Sess., p. 7.

When the bill came to the floor of the House, Representative Sterling, who was in charge of the measure, underscored the sole reason for the provision, saying:

> "The second change in the law provides that the federal courts and the state courts shall have concurrent jurisdiction. I am very sure that they have concurrent jurisdiction as the law is now, but on account of a decision of one of the state courts of Connecticut, where one judge declined to take jurisdiction in a case because it was under a federal statute, the committee thought best to expressly provide in the law that the federal courts and the state courts should have concurrent jurisdiction to avoid the possibility of such a construction in the future." 45 Cong. Rec. 2253.

In reply to a question as to the Committee's purpose in recommending this provision, "Did you intend to limit the state courts in any way in this matter?" the answer was, "Oh, no; just the contrary." 45 Cong. Rec. 2254.

With these authoritative explanations, the bill was passed by the House February 23, 1910. (45 Cong. Rec. 2260.) It was then sent to the Senate and there referred to its Judiciary Committee. The report of that Committee repeated the explanation of the provision made by the House Committee. (Sen. Rep. No. 432, 61st Cong., 2d Sess., p. 5.) Senator Borah, who steered the bill in the Senate, made substantially the same explanation of the purpose of the amendment as had been made in the House. (45 Cong. Rec. 3995, 4034.) The bill was passed by the Senate.

The interpretation of the Act and the 1910 amendment was fully stated by this Court in *Second Employers' Liability Cases*, 223 U. S. 1, as follows (p. 56):

> "We are quite unable to assent to the view that the enforcement of the rights which the congressional act creates was originally intended to be restricted to the Federal courts. The act contains nothing which is suggestive of such a restriction, and in this situation the

intention of Congress was reflected by the provision in the general jurisdictional act [in effect until 1911], 'That the circuit courts of the United States shall have original cognizance, *concurrent with the courts of the several States,* of all suits of a civil nature, at common law or in equity, where the matter in dispute exceeds, exclusive of interest and costs, the sum or value of two thousand dollars, *and arising under the Constitution or laws of the United States.*' August 13, 1888, 25 Stat. 433, c. 866, § 1. *Robb* v. *Connolly,* 111 U. S. 624, 637; *United States* v. *Barnes,* 222 U. S. 513. This is emphasized by the amendment engrafted upon the original act in 1910, to the effect that 'The jurisdiction of the courts of the United States under this Act shall be *concurrent with that of the courts of the several States,* and no case arising under this Act and brought in any state court of competent jurisdiction shall be removed to any court of the United States.' [Court's emphasis above.] *The amendment, as appears by its language, instead of granting jurisdiction to the state courts, presupposes that they already possessed it.*" [Our emphasis here.]

This Court, in *Douglas* v. *N. Y., N. H. & H. R. Co.,* 279 U. S. 377, settled the question that the application of the doctrine of *forum non conveniens* is one of the rules of practice or procedure which a state court may employ in an appropriate case brought under the Federal Employers' Liability Act. In that case plaintiff, a resident of Connecticut, was injured in Connecticut by the defendant; a Connecticut corporation. Plaintiff brought suit under the Act in a state court in New York where the defendant was doing business. The trial court applied the principle of *forum non conveniens* to dismiss the action and the two New York courts of review affirmed the dismissal. (223 App. Div. 782, 248 N. Y. 580.) The case was brought to this Court by certiorari, (278 U. S. 590), and there was squarely presented the question of the right and authority of a state court to refuse to exercise its jurisdiction to retain and dispose of a F. E. L. A. case and to dismiss the case under the doctrine of *forum non conveniens.* This

Court affirmed the action of the New York Court, saying (pp. 387-8):

> "As to the grant of jurisdiction in the Employers' Liability Act, that statute does not purport to require State Courts to entertain suits arising under it, but only to empower them to do so, so far as the authority of the United States is concerned. It may very well be that if the Supreme Court of New York were given no discretion, being otherwise competent, it would be subject to a duty. But there is nothing in the Act of Congress that purports to force a duty upon such Courts as against an otherwise valid excuse."

This Court cited in support of its holding, *Second Employers' Liability Cases*, 223 U. S. 1, where this Court held (p. 56):

> "* * * we deem it well to observe that there is not here involved any attempt by Congress to enlarge or regulate the jurisdiction of state courts or to control or affect their modes of procedure, * * *."

The *Douglas* case, which involved F. E. L. A., is directly in point. This Court has repeatedly cited its decision in the *Douglas* case with approval in opinions which involved generally the principle of *forum non conveniens*. *Gulf Oil Corp.* v. *Gilbert*, 330 U. S. 501; *Herb* v. *Pitcairn*, 324 U. S. 117; *Miles* v. *Illinois Central R. Co.*, 315 U. S. 698.

The holding of the Missouri Supreme Court that the decision in the *Douglas* case rests on a New York statute is without any foundation in fact or law. The statute in question quoted in the Missouri Court opinion denotes nothing one way or the other respecting *forum non conveniens*. In dismissing the F. E. L. A. case there involved, the New York Court applied the historic doctrine of *forum non conveniens* and this Court held in the *Douglas* case that the New York Court had the right and authority on the ground of inconvenience to refuse to hear the F. E. L. A. case and that the exercise of this right and authority did not in any wise conflict with the Federal Constitution or statute.

The New York Court decided the *Douglas* case on the authority of *Murnan* v. *Wabash R. Co.*, 246 N. Y. 244, 158 N. E. 508, which is cited by this Court in the *Gulf Oil* case with approval. The *Murnan* case involved an action begun in the New York state court by a Connecticut plaintiff, based on a claim under the Federal Employers' Liability Act for an accident which occurred in Michigan on defendant's railroad. The trial court applied the principle of *forum non conveniens* to dismiss the case. The Appellate Division reversed and certified the following question of law to the Court of Appeals:

> "(1) Are the courts of this state invested with any discretion to decline jurisdiction of an action brought under the Federal Employers' Liability Act by a non-resident of the state of New York against a foreign railroad corporation, doing business in the state of New York at the time of the commencement of the action?"

The Court of Appeals answered the question in the affirmative, saying (158 N. E. at p. 509):

> "That Congress has undertaken to regulate the exercise of jurisdiction by our courts by making compulsory what in other similar cases is discretionary seems an unreasonable conclusion and a resulting invasion of the powers of our tribunals as heretofore exercised. We conclude that a litigant who brings his action under the federal Employers' Liability Act stands before the court in no different attitude than a litigant who brings his action under the statute of a sister state. He may not be cast out because he is suing under the act of Congress. He may not enforce his rights merely because he is suing under the act."

In *Miles* v. *Illinois Central R. Co.*, 315 U. S. 698, this Court, after holding that a state court, having jurisdiction of one of its citizens, could not restrain such citizen from receiving the benefits of the continued prosecution of a F. E. L. A. case in a foreign jurisdiction, took occasion to obviate any confusion of law as to any attempt of Congress

to control state courts in the matter of the practice and procedure in F. E. L. A. cases, saying (p. 704):

> "This is not to say that states cannot control their courts. We do not deal here with the power of Missouri by judicial decision or legislative enactment to regulate the use of its courts generally, as was approved in the *Douglas* or the *Chambers* cases, note 6 *supra*. We are considering another state's power to so control its own citizens that they cannot exercise the Federal privilege of litigating a Federal right in the court of another state."

In *Herb* v. *Pitcairn*, 324 U. S. 117, this Court, in adhering to its former decisions that Congress, in the enactment of Federal Employers' Liability Act, did not undertake to confer jurisdiction upon or regulate the action of state courts, said (p. 120):

> "Whether any case is pending in the Illinois courts is a question to be determined by Illinois law, as interpreted by the Illinois Supreme Court. For as we have said of the Federal Employers' Liability Act, 'we deem it well to observe that there is not here involved any attempt by Congress to enlarge or regulate the jurisdiction of state courts or to control or affect their modes of procedure, but only a question of the duty of such a court, when its ordinary jurisdiction as prescribed by local laws is appropriate to the occasion and is invoked in conformity with those laws, to take cognizance of an action to enforce a right of civil recovery arising under the Act of Congress and susceptible of adjudication according to the prevailing rules of procedure.' *Mondou* v. *New York, N. H. & H. R. Co.*, 223 U. S. 1, 56-57. 'As to the grant of jurisdiction in the Employers' Liability Act, that statute does not purport to require State Courts to entertain suits arising under it, but only to empower them to do so, so far as the authority of the United States is concerned. . . . But there is nothing in the Act of Congress that purports to force a duty upon such courts as against an otherwise valid excuse.' *Douglas* v. *New York, N. H. & H. R. Co.*, 279 U. S. 377, 387-88."

Again this Court, in *Gulf Oil Corp.* v. *Gilbert*, 330 U. S. 501, said (p. 504):

> "Even where Federal rights binding on state courts under the Constitution are sought to be adjudged, this Court has sustained state courts in a refusal to entertain a litigation between a nonresident and a foreign corporation, or between two foreign corporations. *Douglas* v. *New York, N. H. & H. R. R. Co.*, 279 U. S. 377; *Anglo-American Provision Co.* v. *Davis Provision Co., No. 1*, 191 U. S. 373."

If it is the law that Section 6 of the Federal Employers' Liability Act does not purport to control the exercise of jurisdiction of state courts in the disposition of F. E. L. A. cases, as this Court clearly holds in the cases cited above, then whether or not state courts, in the trial of F. E. L. A. cases, will apply the doctrine of *forum non conveniens* in the matter of retention or reliquishment of jurisdiction in F. E. L. A. cases is a matter of state policy with which Congress has not undertaken to interfere.

The true situation in the instant case is that Congress, by the enactment of Section 6 of F. E. L. A., conferred jurisdiction on Federal courts to try F. E. L. A. cases and fixed venue in Federal courts, but Congress made no provision with respect to state court jurisdiction or venue. To the contrary, Congress, recognizing that state courts already possessed jurisdiction the moment the cause of action was created by the enactment of the Federal Employers' Liability Act, simply did not legislate upon the subject of either state jurisdiction or venue, such matters being left to the functions and responsibilities of the states. In the instant case, the jurisdiction and venue of Missouri courts for the trial of F. E. L. A. cases derive from the Constitution and legislative acts of Missouri.*

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* Mo. Const. Art. I, § 10.
Mo. Const. Art. I, § 14.
Mo. Const. Art. V, § 14.
Section 14 of the Civil Code of Missouri (Laws of 1943, pp. 353 *et seq.*, l. c. 360, Mo. Rev. Stat. Ann., Section 847.14).

II.

The Missouri Supreme Court erred in its interpretation of the opinions of this Court in the Kepner and Miles cases. Neither of these cases involved the authority of a state court to exercise the right to apply the historic doctrine of *forum non conveniens* in determining whether it should retain jurisdiction of a F. E. L. A. case, and neither the Kepner nor the Miles case decided that a state might not by judicial decision or legislative enactment regulate the use of its courts generally. This Court in the Miles case specifically disclaimed that it was holding that states cannot control their courts.

The Missouri Supreme Court sought no support for its conclusion in the language of Section 6 of the Federal Employers' Liability Act nor in the history of the legislation. Nor did it give any consideration to the questions of state law which were presented by the pleadings nor did it consider or determine the issues of fact presented by the motions to dismiss under the doctrine of *forum non conveniens*. It rested its decision solely upon its interpretation of the opinions of this Court in the *Kepner* and *Miles* cases..

The Missouri Supreme Court made it clear that it was deciding only a federal question. It opened its opinion (*State* v. *Mayfield*, — Mo. —, 224 S. W. 2d 105) by saying that the sole question before it was:

> "May a trial judge of a circuit court of this state exercise his judicial discretion in determining whether to retain or relinquish jurisdiction of a case brought under the Federal Employers' Liability Act when a motion to dismiss on the sole ground of *forum non conveniens* is presented before him for a ruling?" (R. p. 68)

It reached the conclusion that

> "Under the Kepner and Miles cases, supra, the doctrine of *forum non conveniens* is not open to relators in the two Federal Employers' Liability cases in question." (R. p. 75)

It made it clear that the only question it was deciding was a question of federal law, saying:

> "Respondents also contend that under our Constitution and statutes the doctrine of *forum non conveniens* cannot be recognized in Missouri. Since we have already ruled the trial court had no discretion in Federal Employers' Liability cases, it is not necessary to discuss the Missouri law upon that subject." (R. p. 75)

The language used in the opinions of this Court, from which the Missouri Supreme Court quotes and upon which it relies in reaching its conclusion, must be confined to the questions in the case being considered. "It is a maxim not to be disregarded that general expressions in every opinion are to be taken in connection with the case in which those expressions are used." *Cohens* v. *Virginia*, 6 Wheat. 264, 399; *Osaka Shosen Line* v. *United States*, 300 U. S. 98, 103.

The issue in *Baltimore & Ohio R. Co.* v. *Kepner*, 314 U. S. 44, was so foreign to the issue in this case that it cannot be considered as a ruling precedent. That case involved an attempt to have a state court of Ohio enjoin the prosecution of a F. E. L. A. case in a Federal District Court of New York. This raised the distinct problem of any attempt by a state court to prevent resort to a federal court by a plaintiff who had a clear right under the federal statute to commence and prosecute his action in the federal court selected by him. The question of the venue and procedure of state courts in F. E. L. A. actions, which is not mentioned in the Act and which has always been held to be determined by applicable state law, was not presented and was not discussed. The case certainly did not involve the question of whether a state court has the right and authority to exercise its discretion under the doctrine of *forum non conveniens* to retain or to refuse to exercise its jurisdiction upon considerations of oppressiveness to a defendant out of all proportion to a plaintiff's convenience or upon considerations affecting the court's administrative problems.

Miles v. *Illinois Central R. Co.*, 315 U. S. 698, involved an issue which is more nearly related to the issue in the case at bar for the reason that the F. E. L. A. action which was the subject of the suit was one brought in a state court. However, that case involved not the question of the power of the forum to exercise its discretion in declining to hear a case because of principles of convenience but the power of a state court to enjoin residents of the state from seeking access to a forum in another state. The plaintiff (the secondly appointed personal representative) in the F. E. L. A. action involved in the *Miles* case was a resident of Missouri and he brought his action in the circuit court of the City of St. Louis, Missouri, where he had a clear right to bring it. The defendant railroad sought an injunction in the Chancery Court of Shelby County, Tennessee, to restrain the widow and children of the decedent, who where residents of Tennessee, from furthering the F. E.L.A. action in the Missouri court in any manner or from receiving the proceeds of any judgment entered there. The sole issue in the case was whether the Tennessee court had authority to restrain the effective prosecution of an F. E. L. A. action properly brought in a Missouri court by a Missouri administrator. The question of the authority of the Missouri court to apply the principle of *forum non conveniens* to decline to hear the case, once the parties were properly before it, was not involved in the case. The Missouri court had not exercised its discretion to decline to hear the case, nor was a motion presented by defendant asking it to exercise such discretion. So the issue presented in the case at bar could not have arisen in the *Miles* case. Considering the issues presented for decision in the *Miles* case, the decision in that case cannot be construed as forbidding the application of the principle of *forum non conveniens* in the usual situation where it is applied by the court in which the action is brought and is based upon considerations affecting the administrative problems of that court, a factor not present in that case.

This Court has held that there are two aspects of the historic doctrine of *forum non conveniens*, and that a court

of competent jurisdiction in which an action is commenced may decline to exercise its jurisdiction either (1) upon a clear showing of facts which establish such oppressiveness and vexatiousness to a defendant as to be out of all proportion to plaintiff's convenience, or (2) upon a showing which makes trial in the chosen forum inappropriate because of considerations affecting the court's own administrative problems. *Koster* v. *Lumbermens Mutual Casualty Co.*, 330 U. S. 518, 524.

We are not left in doubt as to the scope of the decision in the *Miles* case. This Court made it clear that it was not determining whether a state court had the authority to exercise its discretion to dismiss, under the doctrine of *forum non conveniens*, a F. E. L. A. action pending before it. The Court divided on the question of the authority of the Tennessee court to enjoin the Tennessee residents from furthering the F. E. L. A. action in the Missouri court, but we think from reading the three opinions filed that the court was unanimous in its conclusion that the Missouri court might have declined to proceed with the trial of a F. E. L. A. action arising out of an accident in Tennessee involving a Tennessee resident. In the opinion of the court by Mr. Justice Reed, in which Mr. Justice Black, Mr. Justice Douglas and Mr. Justice Murphy joined, it is said (315 U. S. 704):

> "This is not to say that states cannot control their courts. We do not deal here with the power of Missouri by judicial decision or legislative enactment to regulate the use of its courts generally, as was approved in the *Douglas* or the *Chambers* cases, note 6 *supra*. We are considering another state's power to so control its own citizens that they cannot exercise the federal privilege of litigating a federal right in the court of another state."

Mr. Justice Jackson, in his separate opinion concurring in the conclusion that the Tennessee court had no right to interfere with the Missouri proceeding, said (315 U. S. 708):

"It is very doubtful if any requirement can be spelled out of the Federal Constitution that a state must furnish a forum for a nonresident plaintiff and a foreign corporation to fight out issues imported from another state where the cause of action arose. It seems unnecessary to decide now whether this litigation could be imposed on the Missouri court, for it appears to have embraced the litigation. Even if Missouri, by reason of its control of its own courts might refuse to open them to such a case, it does not follow that another state may close Missouri's courts to one with a federal cause of action. If Missouri elects to entertain the case, the courts of no other state can obstruct or prevent its exercise of jurisdiction as conferred by the federal statute or its right to obtain evidence and to distribute the proceeds, if any, in accordance with the Federal Employers' Liability Act."

The dissenting opinion by Mr. Justice Frankfurter, in which Mr. Chief Justice Stone and Mr. Justice Roberts and Mr. Justice Byrnes joined, quotes with approval *Douglas v. N. Y., N. H. & H. R. Co.*, 279 U. S. 377, 387, and unequivocally states that state courts have the right to exercise their discretion under the doctrine of *forum non conveniens* to refuse to entertain imported cases.

We submit that the *Miles* case is authority against the conclusion reached by the Missouri Supreme Court.

The Missouri Court also points to language in the opinions of this Court in *Gulf Oil Corp. v. Gilbert*, 330 U. S. 501, and in *Ex Parte Collett*, 337 U. S. 55, to the effect that this Court held in the *Miles* and *Kepner* cases that *forum non conveniens* was not available in F. E. L. A. cases. Neither the *Miles* nor the *Kepner* case involved the question of the authority of a state court to exercise its discretion to decline jurisdiction of an F. E. L. A. case pending before it upon considerations of convenience under the historic doctrine of *forum non conveniens*, and so what the Court said in the *Gulf Oil* and the *Collett* cases added nothing to its decisions in the *Miles* and *Kepner* cases. In the *Collett* case the sole question was the applicability of Section

1404(a) of Title 28, U. S. Code, to F. E. L. A. cases. Obviously, when this Court said "Prior to the current revision of Title 28 of the United States Code, *forum non conveniens* was not available in Federal Employers' Liability Act suits," it was referring to Federal courts. This is made clear from what the Court said in relation to the language of Section 6 of the Federal Employers' Liability Act (337 U. S. 61):

> "Since the words selected by Congress for Section 6 denote nothing, one way or the other, respecting *forum non conveniens*, there was no occasion to repeal that section, expressly or impliedly; Congress chose to remove its judicial gloss via another statute."

The "judicial gloss" to which the Court refers is that placed on Section 6 in so far as it relates to proceedings in Federal District Courts by what was said in the *Kepner* case, as this Court points out when it says "The inapplicability of *forum non conveniens* to Liability Act suits derives from the *Kepner* decision." Obviously, the statute which the Court said removed the gloss was Section 1404(a) which refers only to proceedings in Federal District Courts.

Whatever may be said with respect to the language used by this Court in its opinions in the *Kepner* and *Miles* cases with respect to the authority of any court, federal or state, to apply the doctrine of *forum non conveniens* in the disposition of a case pending before it, the opinion in the *Collett* case, which holds that the words selected by Congress for Section 6 denote nothing one way or the other respecting *forum non conveniens*, clearly reveals that this Court has removed whatever "judicial gloss" was placed on Section 6 by the *Kepner* and *Miles* cases. The over-all result of the decision in the *Collett* case is that Federal courts are permitted to transfer F. E. L. A. cases from one federal venue to another, and that State courts are free to exercise their discretion to decline their jurisdiction in a F. E. L. A. case upon considerations of convenience under the doctrine of *forum non conveniens*. We think the reason-

ing of the Court in reaching its decision in the *Collett* case is that Section 6 of the Federal Employers' Liability Act never had the effect of denying to State courts in F. E L. A. cases the right to apply the historic doctrine of *forum non conveniens*.

The decision of the Missouri Supreme Court in the instant case, which holds that a State court is compelled to entertain *all* F. E. L. A. actions which are commenced before it, regardless of the considerations of convenience of the parties and of the court, is as unsound and as far from the intention of the Congress in the adoption of Section 6 of the Federal Employers' Liability Act as was the decision of the Supreme Court of Errors of Connecticut in *Hoxie* v. *New York, N. H. & H. R. Co.*, 82 Conn. 352, 73 Atl. 754, which held that the State courts had no authority to entertain *any* action under the Act. The Court was obliged to review the *Hoxie* case to correct the error committed by the Connecticut court and it is imperative that it take this case to correct the error committed by the Missouri court. A denial of this petition would place a gloss on Section 6 of the Federal Employers' Liability Act which might blind other state courts to surrender their right to protect their own integrity and authority.

III.

Section 6 of the Federal Employers' Liability Act, as construed by the Missouri Supreme Court, invades the fundamental right of the states to regulate and control the venue and procedure of state courts.

We think it is clear that there is nothing in the language of Section 6 of the Federal Employers' Liability Act which furnishes the slightest basis for a conclusion that the Congress undertook to regulate and control the venue and procedure in state courts in actions under the Act. The language of the Act and the history of the legislation exclude any such interpretation. This Court has found nothing in

the Act to indicate any such intention. *Second Employers' Liability Cases*, 223 U. S. 1, 56; *Douglas* v. *N. Y., N. H. & H. R. Co.*, 279 U. S. 377, 388.

Federal courts are dependent upon the Constitution and statutes of the United States for their existence, and their jurisdiction, venue and procedure are governed by federal law. State courts are dependent upon the Constitutions and statutes of the respective states for their existence, and their jurisdiction, venue and procedure are governed by state law. There can be no question about these fundamental concepts. There is nothing in Article III of the Constitution of the United States that even suggests that the Congress shall have any authority with respect to state courts and by implication the authority with respect to such courts is reserved to the several states. Lest there be some doubt in the matter, the Tenth Amendment to the Constitution of the United States specifically provides that "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people." Had the Congress of the United States attempted to impose upon the courts of the several states the absolute duty to entertain an action under the Federal Employers' Liability Act regardless of the historic right of the state court to apply the doctrine of *forum non conveniens* to protect itself and its citizens from unjust imposition, it would have transcended its powers and such legislation would have been void. The Missouri Supreme Court has placed an interpretation on the Federal Employers' Liability Act which brings it in direct conflict with fundamental concepts of separation of powers between the United States and the several states. The decision is out of tune with American concepts of justice and should be reversed.

IV.

Since Congress, by the enactment of Section 1404(a) of the Judicial Code, declared a general federal public policy favoring the application of the principle of *forum non conveniens* to all civil actions in Federal courts, including Federal Employers' Liability Act actions, no possible inference can now be drawn from F. E. L. A. forbidding the application of that doctrine by state courts to actions under that Act.

While we cannot concede that this Court has held in the *Kepner* and *Miles* cases, or in any other case, that Section 6 of F. E. L. A. inhibits a state court from applying the doctrine of *forum non conveniens,* if this Court has so held, we now present the view that Congress, by the enactment of Section 1404(a), has removed any judicial gloss implying any such Federal inhibition.

This Court held, in *Ex Parte Collett,* 337 U. S. 55, that Section 1404(a) of the Judicial Code was in no wise inconsistent with Section 6 of F. E. L. A.; that Section 6 made no reference one way or the other to the doctrine of *forum non conveniens;* that the theory that Section 6 of F. E. L. A. prevented the application of the doctrine of *forum non conveniens* came not from the Act itself but from the "judicial gloss" placed upon that Section by the decision in the *Kepner* case; that Section 1404(a) did not repeal Section 6 of the F. E. L. A. in whole or in part and need not be construed as a partial repealer thereof; that it merely removed the "judicial gloss" of the *Kepner* case.

While Section 1404(a) of the Judicial Code, of course, is applicable only to Federal district courts, nevertheless it does enounce a general, federal public policy to recognize and apply the doctrine of *forum non conveniens* in all civil actions in Federal district courts, including actions under F. E. L. A.

Having thus removed the "judicial gloss" of the *Kepner* case, Section 1404(a) certainly nullifies any possible impli-

cation which might, prior to the effective date of that Section of the Judicial Code, have been drawn from the *Kepner* case or the *Miles* case that there was any federal policy to be read out of F. E. L. A., or particularly out of Section 6 of that Act, forbidding a state court from applying the doctrine of *forum non conveniens*. Any previous federal hobble on the power of the states to apply that doctrine to F. E. L. A. cases was certainly removed on September 1, 1948, the effective date of Section 1404(a) of the Judicial Code.

It is inconceivable that Congress intended at the same time to authorize all Federal district courts to apply the doctrine of *forum non conveniens* in F. E. L. A. cases by removing the "judicial gloss" of the *Kepner* case, and yet intended to continue a Federal prohibition, deriving from the "judicial gloss" of the *Miles* case, forbidding state courts to apply that doctrine in F. E. L. A. cases under the same facts. It is inescapable that state courts now retain whatever powers they may have under their respective laws to apply the doctrine of *forum non conveniens* in F. E. L. A. cases, free from any Federal prohibition against such application.

V.

The application of the doctrine of *forum non conveniens* in F. E. L. A. cases does not violate the Privileges and Immunities Clause of Article IV, Section 2, of the Constitution of the United States.

Going back for a moment to the decision of this Court in *Douglas* v. *N. Y., N. H. & H. R. Co.*, 279 U. S. 377, attention is called to the fact that this Court held in that case that the application of the doctrine of *forum non conveniens* by a state court in a F. E. L. A. case would not violate Article IV, Section 2, of the Constitution of the United States, and this Court did not hold to the contrary in either the *Kepner* or the *Miles* case.

It should be kept in mind, in considering this phase of the subject, that for a state to deny a citizen of another state the right to sue in its courts, is one thing; and, for a state, acting through its courts, to relinquish jurisdiction of a cause upon which a suit has been brought by a citizen of another state, is quite another thing.

Attention should be invited to *McKnett* v. *St. L. & S. F. Ry. Co.*, 292 U. S. 230, 233, which was cited by this Court in the *Miles* case in support of the proposition that for a state court to decline jurisdiction of a F. E. L. A. case would constitute an abridgement of the litigant's rights under Article IV, Section 2, of the Constitution. In that case, this Court properly held that a state may not discriminate against rights created by Federal law, but the Court expressly recognized the validity of the principle laid down in the *Douglas* case that the Constitution does not prevent a state court from declining jurisdiction on the grounds of *forum non conveniens*. We call attention to the expression of the Court on that subject, as follows (292 U. S. 233-234):

> "While Congress has not attempted to compel states to provide courts for the enforcement of the Federal Employers' Liability Act, *Douglas v. New York, N. H. & H. R. Co.*, 279 U. S. 377, 387, the Federal Constitution prohibits state courts of general jurisdiction from refusing to do so *solely* because the suit is brought under a federal law." (Our emphasis).

Undoubtedly, this Court, in the *McKnett* case, said, in substance and effect, that a state, through its legislative acts or judgment of its courts, cannot deny to a citizen of another state the right to enter its courts to prosecute a F. E. L. A. case, if such denial amounts to discrimination in favor of its own citizens, as contemplated by Article IV, Section 2, of the Constitution, but once a citizen of another state enters its courts, such state court, under the authority of the *Douglas* case, may relinquish jurisdiction by applying the doctrine of *forum non conveniens* without violating the Privileges and Immunities Clause. This Court said at

p. 233 of the *McKnett* case that under the Federal Employers' Liability Act the jurisdiction of the state court is "invoked according to the rules of procedure prevailing in that court"; and at p. 232 this Court said that a state may determine "the extent to which its courts shall become a forum for the trial of transitory causes of action arising in other states."

The doctrine of *forum non conveniens* bears a peculiar relationship to the Privileges and Immunities Clause. This doctrine does not concern itself with the question of citizenship, but refers to appropriateness of choice of forum, its application depending upon factors of suitableness of the forum. The doctrine may apply to a citizen of the state in which the action is pending as well as to a citizen of another state.

Edward L. Barrett, Jr., in his article on *forum non conveniens*, in 35 Calif. L. Rev., 380, 419, said:

> "The privileges and immunities clause, which once was thought to bar application of the doctrine where the plaintiff was an individual citizen of another state, is clearly not an obstacle today. No other federal constitutional provisions are seriously suggested."

CONCLUSION.

This case involves important factors of public interest. Unless state courts in congested centers can protect themselves from the imposition of imported cases the taxpayers of such communities will be crowded out of their own courts. We think that it is clear that the Congress never intended to deprive state courts of the right and authority to protect themselves from the imposition of imported F. E. L. A. cases and we submit that the Congress had no such authority if it had intended such a result. The courts of New York, Illinois and other populous states are now exercising the right to dismiss F. E. L. A. actions under the doctrine of *forum non conveniens* but the decision of the Missouri Supreme Court in the instant case casts a cloud upon that right. The federal question here involved is sub-

stantial and of wide interest and should be authoritatively determined by this Court.

Respectfully submitted,

SIDNEY S. ALDERMAN,
BRUCE A. CAMPBELL,
FRED W. SCHWARZ,
H. G. HEDRICK,
Southern Railway Building,
15th and K Streets, N.W.,
P. O. Box 1808,
Washington 13, D. C.,
Attorneys for Petitioners,
Southern Railway Company.